

Essential Points of Wartime International Law,
Secretariat of Navy Ministry, 1937

(1) Commencement of Hostilities Preceded by a Declaration of War.

(a) Between the contracting Powers (Japan, the British Empire, the United States of America, France, Germany, the Union of Socialist Soviet Republic and the Chinese Republic are the contracting powers) of the Hague Convention relative to the opening of hostilities, hostile activities shall not be commenced without an unequivocal and previous notification, which shall either be in the form of a declaration of war with reasons thereof, or in the form of an ultimatum including a conditional declaration of war. (Refer to Article I of the same Convention).

(Note) The Imperial Ultimatum to Germany dated August 15, 1914 (of Appendix 40)

(b) Form of Notification

The notification shall be in document form.

(Note) There are such methods as handing the document to the envoy of a belligerent country residing in the country concerned or of sending the document to the belligerent government through the envoy of the country concerned residing in the belligerent country.

In case the diplomatic relations are already severed, procedure in conformity with the above methods shall be taken towards the envoy of a neutral country representing the interests of the country concerned or the belligerent country, the said envoy shall go through the above procedure.

(c) Time of the Commencement of Hostilities.

There is no definite regulation to be observed as to the length of time between a declaration of war or an ultimatum and the commencement of hostilities. Therefore, it cannot be said to be a contravention of the Convention even if hostilities are commenced almost simultaneously with the declaration of war or the arrival of the ultimatum.

(Note) 1) At the second Peace Conference, some insisted that a period of twenty-four hours should elapse between a preliminary notice and hostilities, but this proposal was not accepted. 2) In case the country concerned hands a notice of unconditional commencement of war to the envoy of the belligerent country residing in the former's country, it would be necessary to allow him sufficient time for telegraphing to his country that he has received the said notice.

(d) Notification to Neutral Powers.

A state of war shall be made known without delay to the neutral Powers and not until after the receipt of the notification shall the war effects towards the said Powers be brought about.

The above notification may be sent by telegraph. However, when it is certain that a neutral Power actually knew the existence of a state of war, the said neutral Power cannot insist that the war is not effective as regarding it on the ground that it had received no notification. (Refer to Article II of the same convention).

(2) Commencement of War, not preceded by a declaration of War (or commencement of hostilities).

(a) Between non-contracting Powers of the Hague Convention relative to the opening of hostilities or between a contracting Power and a non-contracting Power. Even if hostilities should be directly commenced between them without a preceding declaration of war or ultimatum, it would not be a violation of the International Law. However, it would generally be censured as a dishonorable act, to suddenly open hostilities when there had been no disputes or negotiations regarding the disputes or without even ascertaining whether the other party would comply with our requests or not.

(Note) 1) At the outbreak of the Russo-Japanese War, the Russian Government criticized adversely that the sudden attack on Jinsen and Port Arthur by Japanese war ships was a vile act, violating the regulations of the International Law. However, prior to this, Japan had been negotiating with Russia for half a year regarding the evacuation of Russian troops from Manchuria in connection with the territorial integrity of Korea, but did not show the least sincerity; on the contrary, she increased her military power and attempted to subjugate us. Realizing that no peaceful solution could be expected, the Imperial Government finally sent an ultimatum on the fifth of February, in which was the following phraseology. "The Imperial Government has decided to take the following measure and at the same time to reserve the right to take such independent actions, as seem best to solidify and defend the position infringed and to protect our vested rights and legitimate interests." Therefore, it is clear that the actions of our warships were far from sudden and vile attack. At the time of the Russo-Japanese War, the treaty regarding the opening of hostilities did not exist.

C E R T I F I C A T E

Statement of Source and Authenticity

I, Michinori YOSHII hereby certify that I am officially connected with the Japanese Government in the following capacity: Chief, Archives and Document Section, Second Demobilization Bureau, and that as such official I have custody of the document hereto attached consisting of 726 pages, dated May, 1937, and described as follows: Essential Points of Wartime International Law compiled by Professor Fumiko, Secretary of Navy Ministry. I further certify that the attached record and document is an official document of the Japanese Government, and that it is part of the official archives and files of the following named ministry or department (specifying also the file number or citation, if any, or any other official designation of the regular location of the document in the archives or files): _____

Signed at Tokyo on this

29th day of October, 1947.

/sgd/ Yoshii Michinori
Signature of Official

Witness: Taso Isobe /sgd/

Chief, Archives and Document Section, SDB.
Official Capacity

Statement of Official Procurement

I, James G. Lambert, hereby certify that I am associated with the General Headquarters of the Supreme Commander for the Allied Powers, and that the above certification was obtained by me from the above signed official of the Japanese Government in the conduct of my official business.

Signed at Tokyo on this

29 day of October, 1947.

/sgd/ James G. Lambert
NAME

Witness: R. H. Larrh

Investigator, IPS
Official Capacity

EXHIBIT

I PS Doc No. 3094

昭和十一年五月

戰時國際法規綱要

海軍大臣官房

小川の、披露

(1) 宣戰ニ依ル戦争開始

(a) 南戰ニ関スル海牙條約締約國(帝國、英、米、佛、独、蘇、支那國等ハ締約國ナリ)間ニ在リテハ、理由ヲ附シタル南戰宣言形式又ハ條件對南戰宣言ヲ含ム最後通牒ノ形式ヲ有スル明瞭且事前ノ通告ヲクシテ敵對行為ヲ開始スベカラザルモノトス(同條約第一條參照)。(註)大正三年八月十五日帝國、對独最後通牒(附録(四)參照)

(b) 通告ノ形式

文書ニ依ルベキモノトス。

(註) 當該國ニ駐在スル對手國ノ使臣ニ手交シ又ハ對手國ニ駐在スル當該國ノ使臣ヲシテ對手國政府ニ送致セラル等ノ方法アルベシ。

國交斷絶後アルトキハ、當該國又ハ對手國ノ利益代表國タル中立國ノ使臣ニ對シ又ハ之ヲシテ右ニ準ズル手續キヲ為サレムベキモノトス。

(c) 南戰ノ時期

宣戰又ハ最後通牒ト敵對行為ノ開始ト間ニ幾何ノ期間ヲ置クベキカニ付テハ、導則ナシ。

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故ニ宣戰又ハ最後通牒、到達ト殆ンド同時ニ敵対
行爲ヲ開始スルモ條約違反ト謂フベカラズ。

(註) (一) 本同盟平和會議ニ於テ豫告ト敵対行爲ト、
間ニ二十四時間、間隔ヲ置クベシト主張アリシ
ルモ採用セラレズ
(二) 当該國ニ駐在スル相手國使臣ニ直接通告
戰、通告ヲ受ケタル場合ハ右使臣が右
通告ヲ受ケタル旨ヲ電報スル相当時間猶豫
スルヲ至ニトスベシ

(b) 中立國ニ付スル通告

戰爭狀態ハ遲滞ナク中立國ニ通告スベク、通告
受領後ニ非ズレバ右國ニ對シテ戰爭、効果ヲ
生ザルモノトス。
右通告ハ電報ヲ以テスルモ英文ナラハ尤モ中立國
ガ實際戰爭狀態ヲ知リタルコト確實ニトス。
右中立國ハ通告ヲ受ケタルハ自國ハ戰爭
ノ效果ナリト主張スルコトヲ得ザルモノトス(同條約
第三條参照)

(2) 宣戰ニ依ラザル戰爭開始(又ハ敵対行爲開始)

(a) 南戰ニ関スル海牙條約非締約國間、又ハ締約
國ト非締約國ト、間。

宣戰又ハ最後通牒ヲ爲スコトナラハ、直ニ敵対
行爲ヲ開始スルモ國際法根違反ニ非ズ。尤モ
紛議存セズ又ハ存スルモ之ニ附シ談判ヲ行

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ハ、若、対華國ヲ我々要求スルニシテ、或ハ之ヲ確メ
ズ、或ハ之ヲ安んず、或ハ之ヲ行ハズ、或ハ之ヲ一取ニ不名譽
行爲トシ、非難スルル所ナリ。

(注)

(一) 日露戦争開始、際、露國政府、帝國軍艦
ヲ仁川及旅順、於テ突然攻撃ヲ開始シ、
皇方ナル行爲ニシテ、國際法、原則ヲ蹂躪
スルモノト非難シタリ。

然、トモ之ヲ、最、露國向、韓國、独立保
全ニ關係シ、滿洲、蒙古、南洋、半島、折衝
シ、露國ニ誠意、認メキモノナリ、
兵艦ヲ増大シ、我々、監視セシメタリ。
帝國、平和的解決、望ムベカラザルヲ以テ、
遂ニ二月三日、最後、通牒ヲ發シタリ。其、
中ニ左ノ文アリ。

帝國政府、本、一途、採用スル、同時、自
其、侵害、受ケタル、強國ニシテ、且、之ヲ
防衛スルヲ、由、帝國、既得權益及正当
利益、擁護スルヲ、最、良、思惟スル、独立、
行動ヲ、取ル、こと、權利ヲ、保留ス。

故、帝國軍艦、行動、決シ、突然、皇方、
攻撃、謂フベカラザル、こと、明瞭ナリ。

(日露戦争當時、開戦、前、ニル、條約、未
ク存在ス。

(三) 開戦=開戦條約成立前迄、慣例に宣
言を爲さるる例極めて數に如し。
即ち左に如し

(一) 一六〇〇年ヨリ一八七〇年ニ至る迄百六十年間
正式に開戦、豫告を爲さるる六十回ニ至
り豫告なきに敵対行為を開始するは
歐洲諸國の歐洲又ハ其海外屬地ニ
於て是れたる場合ハ三回モ百六十年ニ達ス。

(二) 一八〇〇年ヨリ一八七〇年迄六十年間六十回
一八七〇年普佛戦争、佛國ヨリ正式に
告ぐる。一八七〇年露土戦争、露國
ヨリ正式に予告する。

(四) 開戦國の海牙條約締約國間

右條約締約國間ニ於てモ、左に如き場合ハ宣戰
又ハ最後通牒を爲すこととして敵対行為ニ
突ズルことアリ。

一 一方が條約を無視ス、敵対行為ニ出づる
場合。

二 相対する軍隊、内ニ斗争を生じ、所屬國
モ之を助救セラレテ公然戦争ニ訴ふる至
る場合。

三 平時ニ於て自衛手段、又ハ紛争解決
強硬手段より行はるる手段(平時封鎖、
鎮壓、保障占領、廢棄等)ニ對し、對手國

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が強き公敵を以て之を懲罰せんが
場合

四 捕獲したる公敵の要領を破壊し、所は必
然。服する其自衛に爲るを得ん。

直敵討行爲は之の場合

(四) 戦争開始後、公敵の敵討行爲例、(開戦
意思は之を要す)

一 討手國、領土侵入、軍艦軍用航空機
軍需品を討つ攻撃。

二 軍艦以外、公船、拿捕。

三 討手國商船、拿捕。

構造上軍艦と受けるべき公船、政府

特約、戦時直軍用船と見ると之を拿

捕する場合は、開戦原因、之を以て

軍艦輸送、商船、公船、明開

戦原因とすべし。

右、大体標準を過ぎ、實際、各種事情
競合するから、各場合、之を判るべき要。

(註)

一 明治三十七年二月六日、即ち宣戰前帝國軍

艦隊遠く露國表京艦隊を捕、商

船、工カチリス、之を拿捕。

右、開戦後、公敵の敵討行爲例、

其は自衛戦争、右商船拿捕、之を

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始アリタルモ、ト謂フベシ。

(二) 日清戦争、際、高陞野雲次、敵軍
隊ニ対スル敵討行爲(船舶、中立商船
ナト、謂フ敵、補助ヲ爲スモノナリ)
ナリテ、年々南戦ヲ致スベキ行爲ナリ。
(尤モ明治三十五年五月午前即ち同船
沈没、日、午前豊島中、海戦アリ
テ、實際ニ開戦時期、本事件前ナリ。)

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證明書

國際檢察部第三。九四号

典據及公正ニ関スル証明

余「イ・ミナリ」ハ余ノ記資格ニ於テ即チ第三復員局文書課長トシ日本政府公的関係在リトシテ並ニ該官吏トシテ余ガ茲ニ添附シタル此ニ前記一九三七午五月附下記題名即チ海軍省官房「エ」ニ教授兼某戰時國際法、要典、文書保管官ニ任シ居ルコトヲ茲ニ証明ス。

余更ニ添附記録及文書ハ日本政府公文書ニシテ並ニ茲ニ下記名稱有及部局公文書類及綴、部ニシテ証明ス余ガ此ノ綴著者及引用其代公文書類及綴於ル該文書正規所在、公文名稱ヲ特記ス。

一九四三年十月二十九日 東京ニ於テ署名ス

当該官吏署名 「イ・ミナリ」

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證人 磯部 太郎

公式入手ニ関スル証明

余「イ・ミナリ」ハ余ガ聯合國最高指揮官司令部ニ關係在リトシテ並ニ前記題名、文書ハ余ガ公職上日本政府、前記署名官吏ハ人オシタルコトヲ茲ニ証明ス。

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